

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

JERMAINE MITCHELL,)	
)	
Petitioner,)	
)	
v.)	No. 1:15-cr-00040-JAW-3
)	No. 1:19-cv-00184-JAW
UNITED STATES OF AMERICA,)	
)	
Respondent.)	

**ORDER AFFIRMING THE RECOMMENDED DECISION OF THE
MAGISTRATE JUDGE**

The United States Magistrate Judge filed with the Court on January 10, 2020, his Recommended Decision (ECF No. 810). The Petitioner filed his objection to the Recommended Decision on March 6, 2020 (ECF No. 814), and the Government filed its response to the objection on April 24, 2020 (ECF No. 818). The Court has reviewed and considered the Magistrate Judge's Recommended Decision, together with the entire record; the Court has made a de novo determination of all matters adjudicated by the Magistrate Judge's Recommended Decision; and the Court concurs with the recommendations of the United States Magistrate Judge for the reasons set forth in his Recommended Decision, and determines that no further proceeding is necessary.

Jermaine Mitchell's objection to the Magistrate Judge's recommended decision largely reiterates arguments made before—and rejected by—the Magistrate Judge. Because the Court agrees with the Magistrate Judge's analysis of those issues, the Court does not address those portions of the objection. However, Mr. Mitchell also states that "[t]he thrust of [the Magistrate Judge's] position . . . is that Mr. Mitchell

cannot raise subject matter jurisdiction because of a procedural default . . .” *Pet’r’s Resp. to U.S. Magistrate Judge’s Recommended Decision on 28 U.S.C. § 2255 Motion* at 4 (ECF No. 814). This is not correct. In his original habeas petition, Mr. Mitchell bases his arguments about subject matter jurisdiction on the premise that the Controlled Substances Act does not apply to him. *Mot. Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody*, Attach. 1 (ECF No. 764). The Magistrate Judge rejected this assertion as contrary to law, and so rejected Mr. Mitchell’s arguments related to subject matter jurisdiction. *Recommended Decision on 28 U.S.C. § 2255 Mot.* at 5 (ECF No. 810). The Magistrate Judge did not, as Mr. Mitchell contends, state that Mr. Mitchell was foreclosed from making jurisdictional arguments due to a procedural default.

Accordingly, it is ORDERED that the Recommended Decision of the Magistrate Judge (ECF No. 810) be and hereby is AFFIRMED and the Court DENIES with prejudice the Petitioner’s Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody (ECF No. 764). The Court DENIES a certificate of appealability pursuant to Rule 11 of the Rules Governing Section 2255 Cases because the Petitioner has not made a substantial showing of the denial of a constitutional right within the meaning of 28 U.S.C. § 2253(c)(2).

SO ORDERED.

/s/ John A. Woodcock, Jr.
JOHN A. WOODCOCK, JR.
UNITED STATES DISTRICT JUDGE

Dated this 19th day of May, 2020